
HOUSE BILL No. 1798

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-5; IC 36-9-27-114.

Synopsis: Storm water management. Authorizes a county other than Marion County to establish a department of storm water management. (Current law provides that the department of public works acts as the department of storm water management in Marion County.) Provides that the drainage board of a county that has not adopted an ordinance to establish a department of storm water management may establish fees for services provided by the board to address issues of storm water quality and quantity. Makes conforming changes.

Effective: Upon passage.

Bottorff

January 21, 2003, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1798

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1.5-5-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter
- 3 applies to each:
- 4 (1) municipality; and
- 5 (2) **county not having a consolidated city;**
- 6 that adopts the provisions of this chapter by ordinance.
- 7 SECTION 2. IC 8-1.5-5-1.5 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 9 UPON PASSAGE]: **Sec. 1.5. The definitions in IC 36-1-2 apply**
- 10 **throughout this chapter.**
- 11 SECTION 3. IC 8-1.5-5-2 IS AMENDED TO READ AS
- 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this
- 13 chapter, "board" means the following:
- 14 (1) For a consolidated city, the board of public works established
- 15 by IC 36-3-5-6.
- 16 (2) For all other municipalities, the board of directors described
- 17 in section 4 of this chapter.



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(3) For a county:

(A) the county executive and the county surveyor (or the surveyor's designee);

(B) the drainage board; or

(C) the board of directors described in section 4.5(c)(3) of this chapter;

as specified in the ordinance adopting the provisions of this chapter.

SECTION 4. IC 8-1.5-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "department" means the following:

(1) For a consolidated city, the department of public works.

(2) For all other municipalities, the department of storm water management established under section 4 of this chapter.

(3) For a county, the department of storm water management established under section 4.5 of this chapter.

SECTION 5. IC 8-1.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) This section applies to a county.

(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) An ordinance adopted under this section shall provide for the appointment of:

(1) the members of the county executive and the county surveyor (or the surveyor's designee);

(2) the drainage board for the county; or

(3) three (3) directors, appointed by the county executive, not more than two (2) of whom may be of the same political party;

as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive or the drainage board under subdivision (1) or (2), respectively, is coextensive with the member's term of office on the county executive or the drainage board. If the county surveyor or the county surveyor's designee is appointed under subdivision (1), the term of the surveyor or designee as a member of the board is coextensive with the surveyor's term of office. If an ordinance adopted under this section provides for the appointment of a board of directors under subdivision (3), the ordinance must prescribe the terms of the directors and provide for the initial terms of the directors to be staggered.

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1 (d) The county executive may remove a director appointed
2 under subsection (c)(3) at any time when, in the judgment of the
3 executive, it is for the best interest of the department.

4 (e) A member of the board of directors appointed under
5 subsection (c)(1) or (c)(2) is not entitled to a salary or per diem for
6 serving as a member of the board of directors. However, a member
7 shall be reimbursed for necessary expenses incurred by the
8 member in the performance of official duties.

9 SECTION 6. IC 8-1.5-5-5 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The
11 legislative body shall, in the ordinance adopting the provisions of this
12 chapter ~~create~~ **creates** a special taxing district that includes the
13 following:

14 (1) For a consolidated city, all of the territory of the county
15 containing the consolidated city.

16 (2) For all other municipalities, all territory within the corporate
17 boundaries of the municipality.

18 **(3) For a county, all the territory in the county that is not**
19 **located in a municipality that has adopted the provisions of**
20 **this chapter by ordinance.**

21 (b) ~~As to each municipality to which this chapter applies, including~~
22 ~~a consolidated city,~~ All the territory within the district constitutes a
23 special taxing district for the purpose of providing for the collection
24 and disposal of storm water of the district in a manner that protects the
25 public health and welfare and for the purpose of levying special benefit
26 taxes for purposes of storm water collection and disposal. All ~~area~~
27 **territory** in the district and all ~~area~~ **territory** added to the district is
28 considered to have received a special benefit from the storm water
29 collection and disposal facilities of the district equal to or greater than
30 the special taxes imposed on the ~~area~~ **by territory under** this chapter
31 in order to pay all or part of the costs of such facilities.

32 SECTION 7. IC 8-1.5-5-6 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The board
34 has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition,
35 the board may:

36 (1) hold hearings following public notice;

37 (2) make findings and determinations;

38 (3) install, maintain, and operate a storm water collection and
39 disposal system;

40 (4) make all necessary or desirable improvements of the grounds
41 and premises under its control; and

42 (5) issue and sell bonds of the district in the name of the

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1 ~~municipality~~ **unit served by the department** for the acquisition,
 2 construction, alteration, addition, or extension of the storm water
 3 collection and disposal system or for the refunding of any bonds
 4 issued by the board.

5 (b) The board has exclusive jurisdiction over the collection and
 6 disposal of storm water within the district.

7 SECTION 8. IC 8-1.5-5-7, AS AMENDED BY P.L.176-2002,
 8 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 7. (a) The acquisition, construction,
 10 installation, operation, and maintenance of facilities and land for storm
 11 water systems may be financed through:

- 12 (1) proceeds of special taxing district bonds of the storm water
- 13 district;
- 14 (2) the assumption of liability incurred to construct the storm
- 15 water system being acquired;
- 16 (3) service rates;
- 17 (4) revenue bonds; or
- 18 (5) any other available funds.

19 (b) The board, after approval by the ~~legislative~~ **fiscal** body of the
 20 ~~municipality~~, **unit served by the department**, may assess and collect
 21 user fees from all of the property of the storm water district for the
 22 operation and maintenance of the storm water system.

23 (c) The collection of the fees authorized by this section may be
 24 effectuated through a periodic billing system or through a charge
 25 appearing on the semiannual property tax statement of the affected
 26 property owner.

27 SECTION 9. IC 8-1.5-5-12 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) If the board
 29 acquires a storm water system and assumes the liability incurred by the
 30 seller to construct the storm water system, the principal and interest on
 31 the liability so assumed shall be paid from the bond and interest
 32 redemption account in the same manner as bonds of the district would
 33 be paid, and the board shall set aside sufficient revenues to comply
 34 with the requirements of the instrument creating the liability.

35 (b) A ~~municipality~~ **unit** acquiring a storm water system may not
 36 assume any liability for the payment of a secured debt or charge other
 37 than the obligation to apply the revenues in the manner prescribed in
 38 the ordinance.

39 (c) The board may issue bonds in exchange for, or satisfaction of,
 40 the liability assumed in the acquisition of a storm water system. The
 41 bonds so issued may not be issued at less than ninety-seven percent
 42 (97%) of the par value thereof in exchange for, or satisfaction of, the

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liability. Notwithstanding section 13(c) of this chapter, bonds issued in exchange for, or satisfaction of, the liability need not be sold in accordance with IC 5-1-11. However, the interest rate on such bonds may not exceed the average yield on municipal revenue bonds of comparable credit rating and maturity as of the end of the week immediately preceding the issuance of the bonds.

SECTION 10. IC 8-1.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition, construction, repair, and maintenance of the storm water system, the cost of the issuance of the bonds, and the creation of any reserve for the bonds.

(b) Any holder of the bonds may bring a civil action to compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the following:

(1) Making and collecting reasonable and sufficient user fees lawfully established for service rendered by the storm water system.

(2) Segregating the income and revenues of the department.

(3) Applying the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the storm water system on behalf of the **municipality unit served by the department** and the bondholders, with power to:

(A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the **municipality unit served by the department** and its citizens.

SECTION 11. IC 8-1.5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) **This section applies to a municipality.**

(b) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water

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collection and disposal shall be:

- (1) charged against the municipality; and
- (2) paid for in monthly installments as the service accrues out of the:
 - (A) current revenues of the municipality, collected or in process of collection; and
 - (B) tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(b) (c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

SECTION 12. IC 8-1.5-5-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) This section applies to a county.**

(b) The reasonable cost and value of any service rendered to the county by the storm water system by furnishing storm water collection and disposal shall be:

- (1) charged against all the territory in the county, except territory within a municipality that has adopted the provisions of this chapter by ordinance; and**
- (2) paid for in monthly installments as the service accrues out of the:**
 - (A) current revenues of the county, collected or in process of collection; and**
 - (B) tax levy of the county made by the county to raise money to meet the county's necessary current expenses.**

(c) The compensation for the service provided to the county shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

SECTION 13. IC 8-1.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. All real property, rights-of-way, or other property acquired by purchase or appropriation shall be taken and held in the name of the ~~municipality~~ **unit served by the department.**

SECTION 14. IC 8-1.5-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) To procure money to pay for the required property and the acquisition, erection, and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name

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of the ~~municipality~~, **unit served by the department**, special taxing district bonds of the storm water district. The bonds may not exceed the total estimated cost of the work and property to be acquired as provided for in the resolution, including:

(1) all expenses necessarily incurred for supervision and inspection during the period of construction; and

(2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the ~~municipal~~ fiscal officer, who shall then prepare the bonds. The ~~municipal~~ executive shall execute the bonds, and the fiscal officer shall attest the bonds.

(c) The board may not issue bonds of the storm water district, payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.

(d) The bonds are not a corporate obligation or indebtedness of the ~~municipality~~ **unit** but are an indebtedness of the storm water district. The bonds and interest are payable:

(1) out of a special benefit tax levied upon all of the property of the storm water district; or

(2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

SECTION 15. IC 8-1.5-5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

(1) after approval by the ~~legislative~~ **fiscal** body of the ~~municipality~~, **unit served by the department**, shall levy a special benefit tax upon all the property of the storm water district in the

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amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and (2) shall certify the tax levied each year to the fiscal ~~officers~~ **officer** of the ~~municipality and of the county in which the storm water district is located,~~ **unit served by the department** at the same time ~~the levy of the municipality is and in the same manner as other levies of the unit are~~ certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

- (1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and
- (2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

SECTION 16. IC 8-1.5-5-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the ~~legislative fiscal body of the municipality;~~ **unit served by the department.**

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

SECTION 17. IC 8-1.5-5-27 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) **Two (2) or more storm water management districts established under this chapter may enter into an agreement under IC 36-1-7 to cooperate for the collection and disposal of storm water.**

(b) **The drainage board of a county and at least one (1) storm water management district established under this chapter may enter into an agreement under IC 36-1-7 to cooperate for the collection and disposal of storm water.**

SECTION 18. IC 36-9-27-114 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 114. (a) **This section applies to a county that has not adopted an ordinance to adopt the**

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provisions of IC 8-1.5-5.

(b) As used in this section, "storm water improvements" means storm sewers, drains, storm water retention or detention structures, dams, or any other improvements used for the collection, treatment, and disposal of storm water.

(c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.

(d) Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.

(f) The board may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged into the county drainage system.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) Whether the property has been or will be required to pay separately for any part of the storm water improvements.

(7) Whether the property, although vacant or unimproved, is benefited by the availability of storm water improvements.

However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of the owner's property, that a fee or an assessment for the availability of storm water improvements may be charged, and the fee may reflect only the capital cost of the storm water improvements and not the cost of operation and maintenance of the storm water improvements.

(8) The amount of money sufficient to compensate the county for the property taxes that would be paid on the storm water improvements if the storm water improvements were

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- 1 privately owned.
- 2 (9) Any other factors the board considers necessary.
- 3 (g) The board may exercise reasonable discretion in adopting
- 4 different schedules of fees, or making classifications in schedules of
- 5 fees, based on variations in:
- 6 (1) the costs, including capital expenditures, of furnishing
- 7 services to various classes of users or to various locations; or
- 8 (2) the number of users in various locations.
- 9 SECTION 19. An emergency is declared for this act.

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